

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF THE UNION LIGHT, HEAT)
AND POWER COMPANY FOR CONFIDENTIAL)
TREATMENT OF INFORMATION FILED IN)
SUPPORT OF ITS FULL REQUIREMENTS) CASE NO. 91-398
INTERRUPTIBLE NATURAL GAS)
TRANSPORTATION CONTRACT WITH)
INTERNATIONAL PERMALITE, INC.)

O R D E R

This matter arising upon petition of The Union Light, Heat and Power Company ("ULH&P") filed August 27, 1991 and supplemented November 27, 1991 pursuant to 807 KAR 5:001, Section 7, for confidential protection of the billing information contained in its contract with International Permalite, Inc. ("Permalite") on the grounds that disclosure of the information is likely to cause ULH&P competitive injury, and it appearing to this Commission as follows:

ULH&P has entered into a contract with Permalite to transport natural gas to Permalite's manufacturing facility in Kentucky. The contract sets out rates and charges for the transportation service provided Permalite which are not included in ULH&P's general tariff and, therefore, not available to the public. By this petition, Permalite seeks to protect those rates and charges as confidential.

Natural gas is an important component of Permalite's manufacturing process and Permalite is ULH&P's second largest

customer. Permalite's Kentucky plant produces its product in competition with other plants in the states of Illinois, Mississippi, Kansas, and Virginia, all of which enjoy purchasing advantages for gas and transportation over the Kentucky facility. Because natural gas is an important component of its product, Permalite prefers to keep the rates and charges it pays for transportation of gas confidential.

Information filed with the Commission is required by KRS 61.872 to be open for public inspection unless otherwise exempted by statute. Exemptions from this requirement are contained in KRS 61.878, which lists 10 categories of information which may be protected as confidential. One such category, provided in KRS 61.878(1)(b), is for certain commercial information confidentially disclosed to the agency. To qualify for this exemption, it must be established that disclosure of the information is likely to cause substantial competitive harm to the party from whom the information was obtained. To satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

In support of its petition, ULH&P contends that if the information is disclosed, its competitors who provide natural gas to Permalite's competitors operating in the states of Illinois, Mississippi, Kansas, and Virginia may reduce their charges and rates to Permalite's competitors in those states and, by doing so,

possibly cause Permalite to close its Kentucky facility. This supposition is based solely on the opinion of Thomas M. Lawson, the Director of Gas Procurement and Transportation Services for ULH&P, and no other evidence is offered to support its validity. Nevertheless, even if the contention is accepted as valid, the potential injury from disclosure described in the affidavit is not the type that the exemption is intended to protect against.

ULH&P also contends that its competitors could use the pricing information to lure Permalite into closing its Kentucky facility and establishing a new facility in another state where it would enjoy lower utility rates. However, it seems more likely that if Permalite believed that it could lower its manufacturing costs sufficiently by relocating its plant, it would do so. Therefore, protecting ULH&P's rates and charges from public disclosure would not enhance its competitive position.

This Commission being otherwise sufficiently advised,

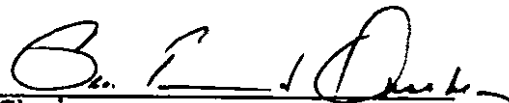
IT IS ORDERED that:

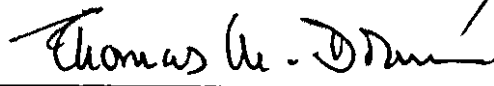
1. The petition to protect as confidential the gas transportation rates and charges contained in the Full Requirements Interruptible Natural Gas Transportation Contract between ULH&P and Permalite be and is hereby denied.

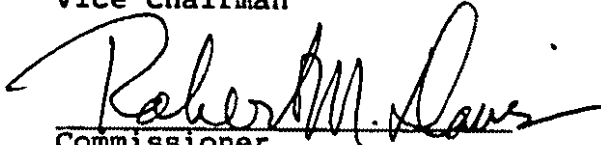
2. The information sought to be protected shall be held and retained by this Commission as confidential and not be open for public inspection for a period of 20 days from that of this Order, at the expiration of which, it shall be placed in the public record.

Done at Frankfort, Kentucky, this 28th day of January, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director